

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

UNITED STATES OF AMERICA,)
)
 8:18CR139
Plaintiff,)
)
-vs-) **MOTION TO SUPPRESS**
)
PHILIP J. GREGORY,)
)
Defendant.)

COMES NOW Defendant, through counsel, and hereby requests this Honorable Court suppress any and all evidence pertaining to the search of the Defendant's residence on or about August 4, 2016 for the following good and sufficient reasons, to wit:

1. On May 10, 2016, the National Center for Missing and Exploited Children ("NCMEC") received CyberTip report #10794821 through their CyberTipline. This automated tip originated from Google, Inc. ("Google") and alleged that a user had uploaded an image of child pornography to Google's photo sharing service Google+ Photos. The email associated with the upload was recognized as "rickydrover@gmail.com" and the IP address was stated as 98.161.46.254.

2. On June 27, 2016, Investigator Dishaw ("Dishaw") received CyberTip report #10794821. Using this information, Dishaw submitted a subpoena to Cox Communications ("Cox"), the service provider associated with the IP address.

3. On July 16, 2016, Cox submitted a response to the subpoena stating that the IP address belonged to Philip Gregory, 15650 Grant Circle, Omaha, Nebraska.

4. On August 3, 2016, using the information provided by Cox, Dishaw submitted an affidavit for a search warrant of the residence of Philip Gregory ("Gregory"). The affidavit was accepted as the basis for probable cause and a search warrant was issued.

5. On August 4, 2016, members of the Douglas County Sheriff's Office and the Federal Bureau of Investigation ("FBI") Child Exploitation Taskforce ("CEFT") executed the search warrant on Gregory's residence.

6. The search resulted in the seizure of a number of electronic devices, including: two (2) desktop computers, four (4) laptop computers, two (2) tablet devices, two (2) computer storage components, and a mobile phone. A forensic examination of the electronic devices seized resulted in the discovery of incriminating evidence.

7. Pursuant to United States v. Carpenter, No. 16-402 (U.S. June 22, 2018), the search was invalid because the information from Cox was obtained through subpoena while such information must be received through a warrant.

8. Further, the affidavit was insufficient to establish probable cause that Gregory's residence contained contraband. The resulting search violated Gregory's rights under the Fourth and Fourteenth Amendments to

the United States Constitution and Article I, Section 7 of the Constitution of the State of Nebraska.

WHEREFORE, Defendant respectfully requests that this matter be set for a 2-hour hearing, and that this Honorable Court suppress any and all evidence obtained pursuant to the search of his residence.

Respectfully submitted,
Philip J. Gregory, Defendant

By: /s/ John S. Berry
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CERTIFICATE OF SERVICE

I hereby certify that on July 30, 2018, I electronically filed the foregoing with the Clerk of the United States District Court, District of Nebraska, using the CM/ECF system which sent notification to AUSA Michael Norris.

/s/ John S. Berry
John S. Berry, #22627